IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18738 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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KANJIBHAI KALYANBHAI PATEL - Petitioner(s)

Versus

RAJKOT DISTRICT CO-OP BANK LTD & 2 - Respondent(s)

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Appearance :
MR BP MUNSHI for Petitioner(s) : 1, 1.2.1,1.2.2
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
M/S THAKKAR ASSOC. for Respondent(s) : 1,
UNSERVED-REFUSED (N) for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/01/2006

ORAL JUDGMENT

The learned advocate for the petitioner seeks permission to delete respondent nos. 2 and 3. Permission as prayed for is granted. The respondent nos. 2 and 3 are hereby deleted as respondents. The learned advocate for the petitioner shall carry out necessary amendment during the course of the day.

2. Rule. Learned advocate Mr. Asit Joshi for M/s. Thakkar Associates -waives service of notice of Rule on behalf of respondent no.1. The present petition has been preferred against the order passed by the Gujarat State Co-operative Tribunal, whereby delay in preferring restoration application was not condoned vide order dated 16th March, 2005. The appeal was preferred by the petitioner which was dismissed for default and restoration application was preferred alongwith delay condonation application. This delay was not condoned by the Tribunal vide impugned order. Hence, the present petition.

2. **The learned advocate for the petitioner submitted that Lavad case bearing No. 439 of 1999 was preferred by the respondent bank. The same was decree ex parte vide order dated 25th October, 1999 by the Board of Nominees at Rajkot. Against this order, an appeal was preferred by the petitioner bearing Appeal no. 19of 2000 which was within the period of limitation. But thereafter, the appeal was dismissed for default by the Tribunal vide order dated 22nd January, 2001 and therefore, restoration application was preferred alongwith detailed grounds referred in the delay condonation**

application Miscellaneous Civil Application no. 285 of 2004. Though there were adequate reasons for condonation of delay and there were convincing, cogent and sufficient grounds for condonation of delay as per section 5 of the Limitation Act, the Tribunal has not appreciated those grounds and dismissed the delay condonation application vide order dated 16th March, 2005 and has not restored appeal no.19 of 2000 which was dismissed for default. It is fairly submitted by the learned advocate for the petitioner that the petitioner is ready and willing to deposit the amount as per ex parte decree passed by the Board of Nominees, but the appeal preferred by the petitioner before the Tribunal may be ordered to be restored so that on merits, the appeal can be argued by the petitioner which was preferred in time, but was dismissed for default.

3. I have heard the learned advocate for the respondent no. 1 who has submitted that the order dated 16th March, 2005 passed by the Tribunal dismissing the delay condonation application is true, correct, legal and in consonance with facts of the case. The appeal preferred by the petitioner bearing Appeal no.19 of

2000 was dismissed for default vide order dated 22nd January, 2001 and the delay condonation application and the restoration application were preferred at a belated stage and therefore, rightly, the Tribunal has dismissed the delay condonation application in preferring the restoration application in the appeal preferred by the petitioner.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, the order dated 16th March, 2005 passed by the Tribunal in restoration and delay condonation application no. 285 of 2004 requires to be quashed and set aside. Lavad case no. 439 of 1999 was preferred by the respondent bank which was decreed on 25th October, 1999. Thereafter, because of the ex parte decree, the appeal was preferred bearing No.19 of 2000 by the petitioner. This appeal was preferred within period of limitation, but the said appeal was dismissed for default by the Tribunal vide order dated 22nd January, 2001 and restoration application was preferred bearing No.285 of 2004, alongwith delay condonation application. The petitioner has also shown readiness and willingness to deposit the amount as per

ex parte decree dated 25th October, 1999 passed by the Board of Nominees. Looking to the grounds for condonation of delay, there were cogent, convincing and sufficient reasons for condonation of delay in preferring restoration application no. 285 of 2004 and for restoration of appeal no. 19 of 2000 which was dismissed for default. As per the petitioner, neither suit nor appeal has been decided on merits. Despite this, the petitioner is ready and willing to deposit the decretal amount as per the the decree passed by the Board of Nominees so that the appeal may be heard by the Tribunal on its own merits. There was no knowledge of the decree passed by the Board of nominees. Similarly, there was no knowledge with the petitioner of the order dated 22nd January, 2001 which was dismissed for default order. It is also not appreciated by the Tribunal that the order dated 22nd January, 2001 was never served upon the petitioner, by which the appeal was dismissed for default. This ground was taken in para-7 of the application for condonation of delay. When the petitioner approached the respondent bank, thereafter only it came to know that the appeal preferred by the petitioner was dismissed for default. There was no acknowledgment receipt in the

record of the case. Looking to the facts of the case, the Tribunal has presumed the service as per the order dated 16th March, 2005. Even otherwise also, the petitioner is ready and willing to deposit the decretal amount as per the order passed by the Board of Nominees. Therefore, the order dated 16th March, 2005 is hereby quashed and set aside. The appeal preferred by the petitioner is hereby restored to file on a condition that the petitioner shall deposit a sum of Rs. 15 lacs (Rs. Fifteen lacs) before Gujarat State Co-operative Tribunal, Ahmedabad on or before 24th February, 2006. The respondent bank shall not be allowed to withdraw this amount without the order of the Tribunal. Upon the deposit of the amount of Rs. 15 lacs as directed above, the Tribunal is hereby directed to hear and decide the appeal No.19 of 2000 within a period of eight weeks from the date of deposit of the amount. Rule made absolute with no order as to costs. Direct service permitted.

(D.N.Patel,J)

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